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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/834,140	04/12/2001	Peter Land	FRT-0004	1993

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12/09/2003

Daniel F. Drexler
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EXAMINER

SHERRER, CURTIS EDWARD

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 12/09/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/834,140

Applicant(s)

LAND, PETER

Examiner

Curtis E. Sherrer, Esq.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 September 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 9-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 9-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 9-21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 9 (and now claim 21) is still indefinite because the scope of the term “immediate” is unknown. Applicant previously responded by stating the term means “without delay.” But this definition provides no further guidance as it is not clear what would constitute a delay. It is noted that Fig. 1 shows that the fluid must pass from the heater to the cooler via line 21 and therefore, based on the fluid velocity and the length of the pipe, there is some delay.

Claim 10 is indefinite because it is unclear how it further defines claim 9. Applicant responds that the calculation for PU relies on a temperature of 60C. Because no value (not even 60C) is found in either claim 9 or 10, it is not seen that claim 10 changes the scope of claim 9.

The claims are indefinite because the process steps are not recited in a positive manner, e.g., --heating-- versus “heated.”

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 9-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over De Stoutz (U.S. Pat No. 3,394,042)(hereinafter Stoutz) in view of applicant's admissions (pages 1-5 of instant specification).

Stoutz teaches the pasteurization of beverages, such as beer. Fig. 5 shows the time/temperature regime for the alcoholic beverage wine. From this figure it can be seen that the beverage is cooled immediately after it has reached its maximum temperature. Stoutz also teaches the use of recuperators and various heating phases. See Fig. 1.

Applicant admits that which is known in the prior art concerning the pasteurization of beer. See pages 1-5 of the specification. Applicant admits that the calculation claimed in claim 2 is the standard equation used in the art when optimizing or designing a pasteurization process. Further, the use of a recuperator is discussed. It would have been obvious to one of ordinary skill in the art to utilize the notoriously well known prior art equation in order to optimize the pasteurization process of Stoutz.

While neither disclosure teaches using a heating phase that is shorter than the cooling phase, this is a parameter that is a result effective variable that those of ordinary skill in the art would optimize in order to obtain the desired result.

Applicant has added new claim 21 that has the added limitations of determining the actual number of pasteurization units actually applied and choosing a maximum temperature. Applicant then argues that the cited art uses a relatively low temperature. First, the prior art discloses heating wine up to around 85C and this temperature is above that disclosed in

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applicant's specification. Second, applicant does not claim any specific temperature. Therefore, the argument is not persuasive.

Lastly, while applicant states that the claimed method is not disclosed in the prior art, the instant rejection is based on obviousness and not anticipation. No argument is presented with regard to nonobviousness.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Curtis E. Sherrer whose telephone number is 703-308-3847. The examiner can normally be reached on Tuesday-Friday, 8AM-6:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 703-308-3959. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3602 for regular communications and 703-305-3602 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

A handwritten signature in black ink, appearing to read 'Curtis E. Sherrer', with a stylized, flowing script.

Curtis E. Sherrer, Esq.
Primary Examiner
November 28, 2003